

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

KIM COOK,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 4:21-CV-1467 JMB
)	
D. MARSHAIK, et al,)	
)	
Defendants.)	

OPINION, MEMORANDUM AND ORDER

This matter is before the Court on the filing of a complaint by inmate Kim Cook. For the reasons discussed below, plaintiff will be directed to file an application for leave to proceed *in forma pauperis* or pay the full \$402 filing fee. Plaintiff will also be directed to file an amended complaint on a Court-provided form.

Background

On July 22, 2021, Garrett Bellow at the Maryville Treatment Center filed a civil rights action on behalf of nine (9) other inmates. *See Barnett v. Marshaik*, No. 4:21-CV-907 DDN (E.D.Mo.).¹ Because multiple prisoners may not join together in a single lawsuit, the Court severed the additional plaintiffs from Mr. Bellow's action. *See, e.g., Georgeoff v. Barnes*, No. 2:09-cv-14-ERW (E.D. Mo. May 18, 2009); Fed.R.Civ.P. 20. Thus, this action was opened on behalf of plaintiff Kim Cook on December 14, 2021. *See Barnett v. Marshaik*, No. 4:21-CV-907 DDN (E.D.Mo.) [ECF No. 2].

Because plaintiff failed to include his own claims in the complaint, or sign the pleading, the Court will require plaintiff to file an amended complaint on a court-provided form. Additionally, plaintiff will be required to file an application for leave to proceed *in forma pauperis*

¹Mr. Bellow was the only plaintiff to sign the complaint, and he was the only plaintiff to submit a motion to proceed in forma pauperis in his case.

or pay the full \$402 filing fee. Plaintiff will have twenty-one (21) days to comply with the Court Order.

Discussion

Under the Local Rules of this Court: “An application to proceed *in forma pauperis* shall be accompanied by a statement of the applicant’s financial information set forth on a form provided by the Court. “The Court may require the submission of additional information in a particular case.” E.D. Mo. L.R. 2.05(A). Additionally, the Clerk can return any complaint submitted for filing *in forma pauperis* which is not accompanied by an affidavit as required by 28 U.S.C. § 1915(a). E.D. Mo. L.R. 2.05(C). Under 28 U.S.C. § 1915(a)(1), the affidavit should include “a statement of all assets.”

The Court may authorize the commencement or prosecution of a civil action without prepayment of fees if the plaintiff demonstrates that he “is unable to pay such fees or give security therefor.” 28 U.S.C. § 1915(a)(1). *In forma pauperis* status is a matter of privilege, not of right. *Williams v. McKenzie*, 834 F.2d 152, 154 (8th Cir. 1987). To enjoy the statute’s benefits, a litigant need not show that he is “absolutely destitute,” but he must demonstrate that, because of his poverty, he cannot pay for the litigation costs and still be able to provide for the necessities of life. *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948); *see also Lee v. McDonald’s Corp.*, 231 F.3d 456, 459 (8th Cir. 2000). Determining whether to grant or deny *in forma pauperis* status under § 1915 is within the sound discretion of the trial court. *Lee*, 231 F.3d at 458.

Plaintiff will be directed to either file a motion for leave to proceed *in forma pauperis* with the required financial information or pay the full \$402 filing fee for this case to proceed. Because plaintiff is currently incarcerated, he must also provide the Court with a certified prison account statement setting forth the past six months of his account in custody, prior to filing his complaint.

Additionally, plaintiff will be directed to file an amended complaint on a Court-provided form. *See* E.D. Mo. L.R. 2.06(A) (“All actions brought by self-represented plaintiffs or petitioners should be filed on Court-provided forms”). Plaintiff must sign the complaint form in compliance with Federal Rule of Civil Procedure 11.

Plaintiff will be given twenty-one (21) days in which to comply. Failure to submit an amended complaint on a Court-provided form, and to either pay the \$402 filing fee or file a motion to proceed *in forma pauperis* accompanied by an account statement, will result in the dismissal of this action without prejudice and without further notice.

Accordingly,

IT IS HEREBY ORDERED that plaintiff must either file an application to proceed in district court without prepaying fees of costs on a Court-provided form, accompanied by a certified prison account statement, or pay the full \$402 filing fee within **twenty-one (21) days of the date of this Memorandum and Order**. Plaintiff must follow the instructions provided on the Court form.


IT IS FURTHER ORDERED that plaintiff shall submit an amended complaint on a Court-provided form within **twenty-one (21) days of the date of this Memorandum and Order**.

IT IS FURTHER ORDERED that the Clerk of Court shall send to plaintiff a copy of the Court’s form application to proceed in district court without prepaying fees of costs.

IT IS FURTHER ORDERED that the Clerk of Court shall mail to plaintiff a blank Prisoner Civil Complaint form.

IT IS FURTHER ORDERED that if plaintiff fails to timely comply with this Memorandum and Order, the Court will dismiss this action without prejudice and without further notice.

Dated this 16th day of December, 2021.

A handwritten signature in black ink, reading "Henry Edward Autrey", written over a horizontal line.

HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE